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ABSTRACT

This booklet accompanies the New York State Library exhibit of material related to the trial of John Peter Zenger. This 1735 trial established the legal precedent giving juries the power to decide libel suits. Labeled "the germ of American freedom," the trial was an important step in the development of American concepts of free speech and a free press. Complementing the exhibit and suitable for use in schools, this booklet includes a reprint of an article from the New York State Museum's publication "Naho" that gives an explanation of the trial, a bibliography of books and articles about the trial, information about trial proceeding documents held by the State Library, a summary of manuscript and archival sources, an explanation of the New York State Newspaper project that seeks to preserve the American heritage through newspaper conservation, and an overview of the State Library Services. (Author/IS)

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John Peter Zenger and the Freedom of the Press

250th Anniversary
1735-1985

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The University of the State of New York
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LC 016 606

This pamphlet accompanies the New York State Library exhibit of material related to the trial of John Peter Zenger. This August 1735 trial established the legal precedent giving juries the power to decide libel suits. Labeled "the germ of American freedom," the trial was an important step in the development of the American concepts of free speech and a free press.

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The Morning Star of Liberty

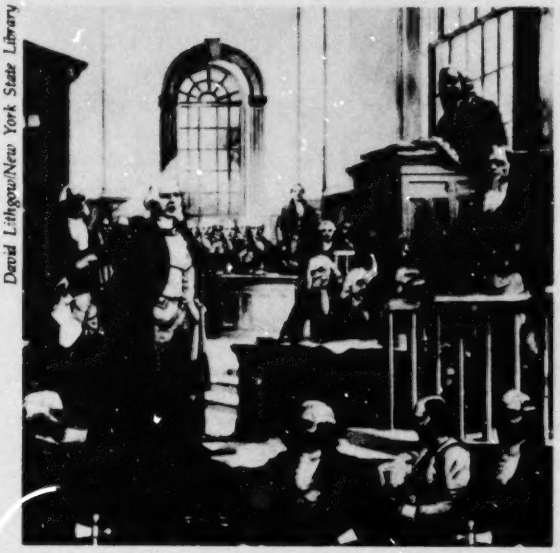
by Miriam Soffer

SOUNDS OF GOOD CHEER RANG OUT from Manhattan's Black Horse Tavern on the night of August 4, 1735. Toasts to the health of Andrew Hamilton, Philadelphia lawyer, abounded at the candle-lit dinner for 40 prominent New Yorkers. The subject of all this exultation, however, was absent. Victor —— or victim —— John Peter Zenger, printer of *The New-York Weekly Journal* and protagonist in one of America's most famous jury trials, was forced to spend one more night in jail, while those who paved his path to prison, celebrated.

Triumph tasted doubly sweet to the victors who knew that John Peter Zenger was guilty as charged. The printer had been acquitted of committing seditious libel for publication of *The New-York Weekly Journal*. The law of provincial New York was based upon England's 1606 Star Chamber case, *de Libellis Famosis*, which was written to protect the King. According to that precedent, broadcasting any information against the government was libelous. Truth was not a defense against libel then. In fact, according to the interpretation of seditious libel in the court of James I, if the damaging information were true, it could be more destructive to the King's position than a lie. It was self-evident that *Journal* articles mocked Governor Cosby and his supporters. All that the prosecutor had to prove was that Zenger had printed *The Journal*. Several witnesses could testify to that. How, therefore, was Zenger, who had so brazenly broken the libel law, acquitted, and why were these solid citizens who were pillars of this eighteenth century community, celebrating such an obvious affront to the law?

New York State Library

A triumphant Andrew Hamilton, attorney for John Peter Zenger, was carried out of City Hall on the shoulders of his confederates.



David Lithgow/New York State Library

New York State Library

The trial of John Peter Zenger was held in a courtroom (left) on the second floor of City Hall on Wall Street (right).

Answers to these questions emerge from conditions that preceded the trial. Zenger was the man who was jailed for printing *The Journal*, but the moving force behind it was the Morrisites — — a political faction forged out of hatred for Governor William Cosby. Leaders of the Morrisites included Lewis Morris, former Chief Justice; James Alexander, prominent attorney; and Rip Van Dam, merchant.

Only about 10,000 people (including 1,700 slaves) lived in New York when William Cosby arrived in 1732. The colony's only newspaper was *The New-York Weekly Gazette*, founded by William Bradford in October 1725. The town was so rural in character that "quail could be killed in the bush east of the present Broadway," wrote Livingston Rutherford in his 1904 account of the Zenger trial. Attracting freeholders and artisans during a somewhat depressed economic period, the Morrisites became the party of the people. In 1733, Lewis Morris and his son Lewis Morris, Jr. were elected to the Provincial Assembly, and the following year, several Morrisites were elected to New York City's Common Council.

Despite the Morrisites' success in the city, Cosby still controlled the colony as a whole. Consequently, the leaders of the fledgling party looked for ways to intensify their campaign. Bradford's *Gazette* was of no use to them for it expressed the will of the governor. Therefore, the Morrisites went to the small print shop of John Peter Zenger, a humble, uneducated printer, and hired him to publish a newspaper. Thus *The New-York Weekly Journal* was born. James Alexander was its editor; the first issue appeared November 5, 1733. The paper published some foreign and domestic news. But it was created to attack William Cosby through an unidentified source. Tossing off epithets such as "overgrown criminal," "monkey," and "impudent monster," the *Journal* was making the governor and his followers the laughingstock of the colony.

Smarting from the paper's affront to his authority, Cosby decided to stop the *Journal*. He ordered the public burning of several issues, and a few days later, on November 17, 1734, John Peter Zenger was charged with seditious libel and put in jail. Since the end of the *Journal* meant loss of their main pipeline to the people, the Morrisites hired James Alexander and William Smith, reputed to be two of the province's best lawyers, to represent Zenger. The attorneys asked for bail to be set at 40 pounds. Chief Justice De Lancey set bail at 400 pounds, an unusually high amount. While this was far beyond the reach of Zenger, the controlling members of the Morrisites could easily have raised this sum. But they decided that the image of the martyred Zenger, kept in jail by the governor's henchman, would evoke public sympathy for the Morrisite cause, according to Stanley Nider Katz, author of the introduction to a recent edition of *A Brief Narrative of the Case and Trial of John Peter Zenger*.

In a subsequent legal battle, Alexander and Smith asked the presiding Justices James DeLancey and Frederick Philipse to disqualify themselves because their pro-Cosby leanings would influence the outcome of the trial. In retaliation,

the infuriated Chief Justice DeLancey stunned Smith and Alexander by disbarring them. It was April by then, and Zenger, still languishing in prison, requested a court-appointed lawyer. The Chief Justice named John Chambers, an able but pro-Cosby attorney. Meanwhile, recognizing the precarious condition of Morrisite affairs, Lewis Morris left for London. He would ask the Crown for restoration of the judgeship Cosby had taken from him, and for the removal of Cosby.

The trial of John Peter Zenger began August 4, 1735. Manhattan's little City Hall Courtroom was packed with observers. Tension built as Attorney General Richard Bradley presented irrefutable information against Zenger.

Chambers' reply was understandably weak. What, after all, could be said to defend a man who was so obviously guilty? Then lightning struck. A dignified, white-haired man strode to the bench and stated that he would represent Zenger. Suspicious of Chambers' pro-Cosby sentiments, the Morrisites had hired Andrew Hamilton, the silver-tongued lawyer and longtime friend of James Alexander.

Hamilton presented a brilliant argument, which, according to Cathy Covert in "the Feud Behind the Zenger Case," was prepared largely by James Alexander. Like all of the lawyers involved in the case, Hamilton realized that Zenger had flaunted the law of the land. But instead of arguing the law, Hamilton appealed to the emotions of the jury. The law he invoked was a law that did not exist: the right of the people to criticize government officials. He said that the government exists to protect its citizens. If officials do not act in the interest of the public good, then the free man has "a right publicly to remonstrate the abuses of power in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men in authority."

Hamilton told the jury that the law cited by Judge DeLancey was obsolete and so in this case, the jury must define right and wrong. Furthermore, Hamilton continued, laws made to protect the King do not apply to a provincial governor thousands of miles from the throne and the supervision that emanates from it. In assuming protection designed for a King, the governor usurped the glory of the Crown and subverted it for his own purpose.

These arguments fired the imagination of the jury. It took only a few minutes to bring in the verdict: not guilty. The Morrisistes went out to celebrate. The next day, when they paid the bill for Zenger's 8½ months in jail, the printer was released.

New York State Library

Governor Cosby ordered the public burning of *The Journal* in November 1734, a few days before Zenger was imprisoned.

The Morrisites had won. But from the short-range view of life in the colonies, little had changed. Eventually Zenger became the official printer of New York and New Jersey, but was plagued by debt until the end of his days. *The Journal* continued to be published until 1751. Cosby remained governor, and when he died in 1736, his chief advisor, George Clarke, succeeded him. The leaders of the Morrisites lost their popular following when they moved to the side of Clarke. An unsuccessful Lewis Morris returned from his mission to London and subsequently became governor of New Jersey which was separated from New York in 1738. Smith and Alexander were re-admitted to the bar. By 1727, no trace of Morrisite opposition was to be found in New York, says Katz, and from a legal standpoint, the Zenger case did not establish a precedent in the colony. Hamilton's concept of free speech was not incorporated into a New York statute until 1805. In England, truth did not become a defense to libel until Lord Campbell's Act was passed in 1843.

Nevertheless, the trial did have an impact. It demonstrated that the jury had the power, if not the right to decide a libel suit. Since this possibility made the outcome of a jury trial for libel uncertain, the provincial government tended to use other methods to suppress free speech. In addition, the case posed issues about the purpose of the courts. In finding Zenger not guilty despite the law, the jury linked law and politics and raised questions about the use of the courts for political statements that instigate change.

Furthermore, James Alexander's 1735 publication of *A Brief Narrative of the Trial and Case of John Peter Zenger* kindled worldwide discussion about the never-ending conflict between the rights of the individual and the obligations of the state, and the continuing clash between progress and stability. *A Brief Narrative* also helped make the Zenger trial a rallying call to freedom. In 1770, for example, when the Grand Jury indicted Alexander Mac Dougall, a leader of the Sons of Liberty, for libel, a reprint of *A Brief Narrative* was brandished and the government dropped the charges.

The tones of Hamilton's stirring plea for laws that serve rather than enslave the people have reverberated through the centuries. But as early as 1776, Governeur Morris, a statesman and grandson of Lewis Morris, captured the essence of the Zenger case when he called it "the germ of American freedom, the morning star of that liberty which subsequently revolutionized America."

THE FRUITS OF DISCONTENT

New York State Library

James Alexander

The New York Public Library

Lewis Morris

New York State Library

Rip Van Dam

While nineteenth century historians tend to glorify the people surrounding Zenger, twentieth century historians claim that the lofty ideals inspired by the trial were generated by a few rich men grasping for power. Dissatisfaction set in as soon as Governor William Cosby arrived in 1732.

Although Cosby's supporters backed him firmly, he was noted for using his position for enormous personal gain. Many New Yorkers saw him as "quick tempered, haughty, unlettered, jealous, and above all, greedy," according to historian Stanley Katz. As the list of grievances grew, widespread dislike for Cosby converged on a dispute between the Governor and Rip Van Dam, who had governed the colony until Cosby arrived. Usually, but not always, one-half of the temporary administrator's salary was turned over to the new Governor. Cosby, armed with an order from the Privy Council, demanded payment immediately upon arrival in New York. When the money was not forthcoming, he turned to the courts for collection of the debt. Chief Justice Lewis Morris found for Van Dam. Cosby stripped Morris of his judgeship. Since the political star of the powerful Morris family had begun waning several years before, the Governor's move was a severe blow.

Lewis Morris galvanized family and friends, and vowed to ruin Cosby. He found sympathy in his colleague, James Alexander, who drank his own special cup of bitterness for Cosby. According to Cathy Covert, journalist and historian, Alexander is generally presented as a high-minded philosopher imbued with principles of freedom. She claims, however, that his noble aims blanketed a desire to even a personal score with Cosby. Looking forward to the arrival of the new governor, Alexander described Cosby in a letter dated 1731, as "a gentleman of good character," and lent him over 4,500 pounds. Alexander expected repayment —— in both money and influence. But Cosby gave Alexander no quarter, and did not even return the entire amount of the loan. Stung by their loss of power, Morris, Van Dam, and Alexander formed the Morrisite party, and curried the favor of the people to promote it. While the party matched the mood of the common man, much of its leadership was based upon personal considerations, according to Katz and Covert, who demonstrate that the dazzling principles nurtured by the founders of the Morrisites were grounded in dissatisfaction with the dispensation of the spoils of office.

FOR FURTHER READING

A Brief Narrative of the Case and Trial of John Peter Zenger, Printer of The New York Weekly Journal, by James Alexander, edited by Stanley Nider Katz The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1972

John Peter Zenger, His Press, His Trial, by Livingston Rutherford, Dodd, Mead & Company, New York, 1904

" 'Passion Is Ye Prevailing Motive': the Feud Behind the Zenger Case," by Cathy Covert, Journalism Quarterly, spring 1973

"The Case of John Peter Zenger," by Lincoln Barnett, *American Heritage* 23 (1). 1971

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The Trial

Buranelli, Vincent. *The Trial of Peter Zenger*. New York, New York University Press, 1957.

Clark, Gavin. *Foul, False and Infamous. Famous Libel and Slander Cases of History*. New York, Abelard Press, 1950, pp. 33-67.

Heartman, Charles F. *John Peter Zenger and His Fight for the Freedom of the American Press*. Highland Park, N.J., Harry B. Weiss, 1934. Ltd. ed. Includes issue 22, April 1, 1734 of the New-York Weekly Journal.

Katz, Stanley N. *Newcastle's New York: Anglo-American Politics 1732-1753*. Cambridge, Harvard University Press, 1968.

Levy, Leonard W. *Freedom of the Press from Zenger to Jefferson, Early American Libertarian Theories*. Indianapolis, Bobbs-Merrill Co., 1966. Introduction and pp. 10-82.

McCracken, Henry Noble. *Prologue to Independence, The Trials of James Alexander, American 1715-1756*. New York, James H. Heineman, 1964.

Rutherfurd, Livingston. *John Peter Zenger, His Press, His Trial and a Bibliography of Zenger Imprints*. New York, Dodd, Mead & Co., 1904, 1968 reprinted.

Smith, Joseph H. and Leo Hershkowitz. "Courts of Equity in the Province of New York." The Cosby Controversy, 1732-1736 in *American Journal of Legal History*, v.16, no.1, January, 1972.

Fiction

Cooper, Kent. *Anna Zenger, Mother of Freedom*. New York, Farrar, Straus & Co., 1946.

Galt, Tom. *Peter Zenger, Fighter for Freedom*. New York, T.Y. Crowell Co., 1951.

Official Records

Proceedings of the trial were published first in 1736 and many reprints were published in later years.

The following is a selection of published trial proceedings available in the State Library. Of the seventeen editions printed prior to 1800, the State Library owns seven.

Remarks on the Trial of John Peter Zenger...London, J. Roberts, 1738 (Trials 2146)

Case and Trial of John Peter Zenger of New York, Printer...London, J. Wilford, 1750.

Trial of John Peter Zenger, of New York, Printer..., London, P. Brown, 1752.

Brief Narrative of the Case and Trial of John Peter Zenger, Printer of the New-York Weekly Journal, Lancaster, W. Dunlap, 1756.

Trial of John Peter Zenger, of New York, Printer...London, J. Almon, 1765.

Brief Narrative of the Case and Trial of John Peter Zenger...New York, John Holt, 1770.

Brief Narrative of the Case and Trial of John Peter Zenger, Printer of the New-York Weekly Journal. Boston, Bible and Heart, 1799.

Modern reprints of the trial may be found in:

Rutherfurd, L., *John Peter Zenger* (1904, 1968) Reprints 1736 edition of the trial.

Parks, Stephen, ed. *Three Trials: John Peter Zenger, H.S. Woodfall and John Lambert 1765-1794*. Reprints the 1765 edition of the trial.

New-York Weekly Journal
1733-1751

This newspaper was established by John Peter Zenger on November 5, 1733, printed by him until his death on July 28, 1746, and printed by his wife Anna Catherine and son John from 1746 to 1751.

Several libraries have scattered issues of the newspaper, and the New York Historical Society has the most complete set of the original newspaper.

The New York State Library has the following issues of the *New-York Weekly Journal:* January 13, 1734, April 1, 1734, March 1 and 15, 1735.

The State Library also has a complete microform copy of the Zenger newspaper.

Notes on Manuscript Sources of the Zenger Trial

Perhaps the major source for research about the Zenger trial is the *Minute Book of the Supreme Court of Judicature*, 1732-1739, which contains the minutes of the trial, King vs. John Peter Zenger. The *Minute Book* is on file with the New York County Clerk, New York County Courthouse, 60 Centre Street, New York, New York.

The New York Historical Society has the Rutherfurd Collection which includes correspondence of James Alexander with Zenger relating to his defense of Zenger. The Society is at 170 Central Park West, New York, New York.

The New York State Archives, Empire State Plaza, Albany, New York, has the *Minutes* of the Legislative Council of the Colony of New York, November 2, 1734 and November 18, 1734 related to the arrest of Zenger and the burning of his newspaper.

The Manuscript Division of The New York Public Library has about 36 items related to the Zenger case including affidavits, drafts of letters and other material, all as part of the papers of James Alexander. The Manuscript Division is in the main library, 5th Avenue and 42nd Street, New York, New York.

NEW YORK STATE NEWSPAPER PROJECT

The history of journalism in New York State dates back to 1725, the year William Bradford established his *New York Gazette* as the colony's first newspaper. Since that date, New York has become a major center of world journalism – home of such prestigious titles as *The New York Times, The Wall Street Journal*, and the *Hearld-Tribune*. Alongside these major metropolitan dailies there has grown a thriving ethnic and regional press, made up of hundreds of small dailies and weeklies, all documenting the day-to-day development of the communities they serve.

Throughout New York State there are important newspaper files in local libraries, publishing offices, historical societies, museums, and the collections of private individuals. Many of these files have suffered the ravages of time and are rendered unusable by the natural deterioration of the fragile papers upon which they are printed, inadequate storage conditions, and years of handling by researchers. This vital historical record is crumbling before our eyes.

In 1985, the New York State Library began a massive statewide effort to locate, identify and preserve an estimated 24,000 newspaper files. The first step, a bibliographic survey and catalog of existing newspaper collections will take up to 10 years to complete. A two-year pilot project will survey files in 18 counties in the capital and southeastern regions of the State, and 5 counties in the Rochester area.

This project culminates a 10-year planning effort on the part of the New York State Library. Funding for the surveys and for subsequent microfilming to preserve the remaining files is being provided by the National Endowment for the Humanities, under its U.S. Newspaper Program. However, the newspaper project must match a portion of the funding provided by the Endowment. The New York State Library seeks funding from private and corporate foundations and donors.

Information about newspaper collections in New York State will be recorded in a national computer data base, providing access to New York's newspaper heritage to interested researchers all over the country. Two major New York state collections already have been cataloged in this manner: more than 3,000 newspaper titles in the State Library have been inventoried and cataloged in 1984-85, and a similar effort mounted at the New-York Historical Society in New York City has now reached the half-way mark with over 5,000 titles added to the data base.

Further information on the New York State Newspaper Project, is available from Paul Mercer, Newspaper Project Coordinator, New York State Library, Cultural Education Center, Albany, N.Y. 12230, (518) 474-5959.

THE NEW YORK STATE LIBRARY
RESEARCH CENTER FOR GOVERNMENT AND CITIZENS

The New York State Library is part of the State Education Department's Office of Cultural Education. The State Library serves through two major divisions:

- the 4.5 million item research library for the government and the people of the State.
- the library development division for the planning, coordination and development of library services.

A collection of over 1.9 million volumes, access to an on-line state library catalog and over 200 other data bases, and special collections of maps, manuscripts, and other special media materials provide the basis for library service to some 84,000 walk-in users, and over 100,000 interlibrary loan requestors each year. In 1983/84 reference inquiries at the library increased 18 percent, rising for the first time to over 100,000 a year. Nearly 5,000 data base searches were provided for government clients, a special project provided legal information to 3,400 prisoners, and over 300,000 special media materials were loaned to 25,000 blind and visually handicapped users.

More than half of those who come to the library to consult the collections and use reference services are staff of government offices. The library's legislative governmental services unit also operates service points at the legislative office building and the state office campus. There, government staff can consult the State Library on-line catalog and pick up and return materials they borrow. In 1983/84 legislative and governmental services filled 6,580 research requests at these service points.

Library Development activities conducted by the State Library include planning, coordinating, and developing statewide library services. Staff specialists work with public officials, librarians, and the governing authorities of New York's 7,700 libraries, providing technical assistance, publishing data on libraries, and administering some $65 million in State and Federal aid for the improvement of library services.